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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Advanced Television Systems)
and Their Impact upon the) MM Docket No. 87-268
Existing Television Broadcast)
Service)

To: The Commission

OPPOSITION TO PETITION FOR RECONSIDERATION

The University of Southern Colorado ("USC"), licensee of Television Station KTSC(TV), Pueblo, Colorado, by its attorneys and pursuant to 47 C.F.R. § 1.429(f), hereby opposes the Petition for Reconsideration ("Petition") filed by Pikes Peak Broadcasting Company ("Pikes Peak") in the above-captioned proceeding.¹ Like its earlier "Comments," Pikes Peak's Petition demonstrates its hopeless confusion regarding the FCC's digital television ("DTV") allotment rules and the DTV allotment for KTSC(TV). Pikes Peak does not challenge the FCC's rules nor does it provide any other basis for the FCC to disturb KTSC(TV)'s DTV allotment. Pikes Peak's claimed "error" is simply wishful thinking. Accordingly, Pike's Peak's Petition must be dismissed.

In its *Fifth Report and Order* in MM Docket No. 87-268, the FCC announced that pursuant to Congress's mandate in the Telecommunications Act of 1996, DTV

¹ *Advanced Television Systems and Their Impact upon the Existing Television broadcast Service, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, MM Docket No. 87-268, FCC 98-24 (released Feb. 23, 1998) ("Sixth MO&O").

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channels would be assigned to all broadcasters who, as of April 3, 1997, hold a "license to operate a television broadcast station or a permit to construct such a station or both."² In accordance with that rule, DTV allotments specified in the *Sixth Report and Order* took into account a station's authorized facilities including granted modifications.³ Accordingly, KTSC(TV)'s DTV allotment was based on the facilities authorized in its construction permit, granted by the FCC in 1991, to relocate the station's transmitter site to Cheyenne Mountain. *Id.* Appendix B-51.

Pikes Peak has not and does not challenge in its Petition the FCC's general rule regarding the allotment of DTV channels based on authorized (either by permit or license) facilities. Pikes Peak's sole claim is that this rule was applied erroneously to KTSC(TV) but the premise underlying the claim, that KTSC(TV)'s construction permit for the Cheyenne Mountain site is invalid, is patently wrong.

Much of Pikes Peak's Petition is a regurgitation of its unauthorized and meritless December 1997 petition for reconsideration of the *Sixth Report and Order*. Disguised as "Comments" on the Association for Maximum Service Television, Inc.'s November 1997 submission concerning certain DTV issues, Pikes Peak made the same meritless claims regarding the Cheyenne Mountain permit. As USC demonstrated in its Motion to Strike Pikes Peak's "Comments," there is no question

² *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order*, MM Docket No. 87-268, FCC 97-116, ¶ 17 (released Apr. 21, 1997) (emphasis added).

³ *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Sixth Report and Order*, MM Docket No. 87-268, FCC 97-115, ¶ 33 (released Apr. 21, 1997) ("*Sixth Report and Order*"); *Sixth MO&O*, ¶ 189.

that USC holds a valid authorization to construct modified television facilities on Cheyenne Mountain. An application is pending to extend the authorization; however, the fact that the FCC staff has not yet acted on the application provides no basis for Pikes Peak's fanciful conclusion that the authorization is now invalid. Moreover, as USC also demonstrated in its Motion to Strike, the pendency of the channel exchange proceeding involving the proposed swap of KTSC(TV)'s authorized facilities with those of KOAA-TV, Pueblo, Colorado, is irrelevant to the validity of the KTSC(TV) construction permit.⁴ In short, "the University still holds the Cheyenne Mountain permit and accordingly should be permitted to construct its DTV facilities at the Cheyenne Mountain site." USC Motion to Strike at 4.

The Commission tacitly rejected Pikes Peak's "Comments" in the *Sixth MO&O* by retaining the Cheyenne Mountain site as KTSC(TV)'s DTV transmitter site. *Sixth MO&O*, Appendix B-52. The same decision is warranted here. As with its earlier "Comments," Pikes Peak's Petition is rife with mischaracterizations and is based on a gross misunderstanding of the FCC's DTV allotment rules and policies. Pikes Peak provides no basis for the Commission to reconsider either its overall rule to

⁴Significantly, Pikes Peak has not repeated the disingenuous claim made in its "Comments" that USC had "abandoned" the Cheyenne Mountain permit by proposing the channel swap with Sangre de Cristo Communications, Inc., licensee of KOAA-TV.

base DTV allotments on facilities authorized as of April 3, 1997 or the application of that rule to KTSC's DTV allotment. Its Petition should be dismissed forthwith.

Respectfully submitted,

UNIVERSITY OF SOUTHERN COLORADO

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May 26, 1998

CERTIFICATE OF SERVICE

I, Lisa G. Eyeson, Secretary in the law offices of Schwartz, Woods & Miller, hereby certify that I have on this 26th day of May, 1998, sent by First Class United States mail, postage prepaid, copies of the foregoing **OPPOSITION TO PETITION FOR RECONSIDERATION** to

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